

Board & Commission Members' Orientation Session

Tuesday, October 2, 2007

10:00 – 10:30 a.m.

Ethics Overview

*(0.50 hour CLE)**

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Hosted by Governor Chet Culver & Lt. Governor Patty Judge

ETHICS OVERVIEW

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October 2, 2007**

By:

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OVERVIEW:

The "Government Ethics and Lobbying Act" in Iowa Code chapter 68B and the Iowa Ethics and Campaign Disclosure Board's (Board) administrative rules in 351—Chapter 6 establish the executive branch code of ethics. The Board is charged with the oversight and enforcement of these laws. This material covers some of the relevant provisions. I encourage you to review all of the laws and rules in those chapters.

RELEVANT STATUTORY PROVISIONS:

1. 68B.2A Conflict of interest.

1. While serving on a board or commission you are prohibited from doing certain things that impact your private sector (outside) employment. The statute sets out three situations that create an impermissible conflict of interest:

A. Using state resources to benefit your outside employment. The Board also has an administrative rule that prohibits the misuse of public property.

B. The outside employment involves the receipt of compensation for the performance of any act or duty that would be required as part of your official state duties or responsibilities.

C. The outside employment is subject to your official control, inspection, review, audit, or enforcement authority as part of your official state duties.

2. The following remedial actions are required if you have a conflict:

A. If it is a conflict as described in A or B above, you must immediately cease the outside employment.

B. If it is a conflict as described in C above, you must do ONE of the following:

1. Cease the outside employment; or

2. Publicly disclose the existence of the conflict and refrain from taking any official action concerning the outside employment as part of your state duties.

2. 68B.2 Executive branch compensation.

1. If you are going to receive compensation simultaneously from more than one state agency, you must file a report with the Board within 20 days of accepting employment with the second state agency.

3. 68B.3 When public bids required.

1. With certain specific exceptions, you cannot sell as part of your private sector business, any goods or services having value in excess of \$2,000.00 to any state agency unless the sale is made pursuant to an award or contract unless the award or contract is competitively bid.

4. 68B.4 Sales/Leases by regulatory agency officials and employees.

1. An official or employee of any regulatory agency cannot sell or lease any goods or services to individuals, associations, or corporations subject to the regulatory authority of the agency of which the person is an official or employee unless ALL four of the following are met:

- A. Prior consent of your agency to engage in the sale or lease is given and you are not the individual who gives the consent;
- B. Your state duties are not related to the regulation of the person or entity in question, nor does the sale or lease affect your state duties;
- C. The sale or lease does not include advocacy on behalf of the regulated person;
- D. The sale or lease does not cause you to sell or lease goods or services to your own agency.

2. Board rule 351—6.11 sets out the procedure for requesting consent, the agency granting consent, and the appeal process if consent is denied. A copy of the consent is required to be filed within 20 days with the Board. Most regulatory agencies have adopted a “blanket” consent to cover situations that are not subject to a “direct” conflict of interest.

3. Iowa Code section 68B.2(23) defines “regulatory agency” as the following: department of agriculture and land stewardship, department of workforce development, department of commerce, Iowa department of public health, department of public safety, department of education, state board of regents, department of human services, department of revenue, department of inspections and appeals, department of administrative services, public employment relations board, state department of transportation, civil rights commission, department of public defense, Iowa ethics and campaign disclosure board, and department of natural resources.

5. 68B.7 Other Activities—two-year ban.

1. Within two years of leaving service with the state you cannot appear before your former agency or receive compensation for any services rendered on behalf of any person in relation to any case, proceeding, or application with respect to which you were directly concerned and personally participated during state employment.
2. A person who has served on a board or commission of a regulatory agency cannot, within 2 years after leaving that board or commission, accept employment with that board, commission, or agency or receive compensation for any services rendered on behalf of any person in any case, proceedings, or application before your former agency.

6. 68B.22 Gifts accepted or received.

1. You are prohibited from accepting or soliciting gifts from “restricted donors.” Iowa Code section 68B.2(24) defines “restricted donor” as the following:
 - A. A person seeking to be a party to any sale, purchase, lease or contracts to, from, or with the agency in which the donee is employed, or
 - B. A person, or the agent of such a person, who will directly and substantially be affected financially by the performance or nonperformance of the donee’s official state duties in a manner separate from other members of the public, or
 - C. A person, or the agent of such a person, who is the subject or party to a matter which is pending before an agency, or
 - D. A lobbyist or a client of a lobbyist with respect to matters within the donee’s jurisdiction.
2. Nonmonetary gifts may be accepted if they are donated within 30 days to a public body, Department of Administrative Services, or a charitable organization.
3. There are currently eighteen exceptions to the gift law. The most common exceptions:
 - A. Gifts of \$3.00 or less;
 - B. Actual expenses for participating on a panel or speaking engagement;
 - C. Plaques or other items of negligible resale value given as recognition for public service.
4. Iowa Code section 68B.23 prohibits the acceptance of honoraria from a restricted donor. The same basic rules concerning the gift law also apply to honoraria.

7. 68B.35—Filing of personal financial disclosure statements.

1. Some of you may be required by Iowa Code section 68B.35 to file a personal financial disclosure statement on or before April 30 of each year. The Board works with each agency to determine which persons are required to file the form. The failure to timely file a form or the failure to file a true and accurate form are subject to sanctions.

8. Rule 351—6.9 Use of confidential information.

1. The rule prohibits the use of confidential information, including the contents of a sealed bid, for the personal gain or benefit of any person. The rule does not apply to the release of information mandated by law, rule, or court order.

GETTING HELP:

1. You may seek written or oral advice from the Ethics Board staff.
2. Formal advisory opinions from the Ethics Board may also be obtained. These opinions apply the relevant law or rule to a particular set of facts. Compliance with the advice contained in a Board opinion, if followed, constitutes a defense to a subsequent complaint filed concerning that particular factual situation.
3. Educational materials are distributed each year to every agency.
4. The Board's Web site has a section that is designated specifically for executive branch ethics at: <http://www.state.ia.us/ethics/chapter68b/ethics/executiveethics.htm>